

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ENBRIDGE PIPELINES (EAST TEXAS), §
L.P. by ENBRIDGE HOLDINGS (TEXAS §
SYSTEMS), L.L.C. ITS GENERAL §
PARTNER, §
§

Plaintiff,

v.

INTERNATIONAL PAPER COMPANY,

Defendant.

§ CIVIL ACTION NO. H-04-1017

MEMORANDUM AND ORDER

Pending before the Court are Plaintiff's Motion to Compel Production of Documents (Doc. No. 73), Plaintiff's Motion to Exclude Testimony of William Richard Harper, Jr. (Doc. No. 59), and Plaintiff's Motion to Exclude Testimony of H. Noel Duckworth (Doc. No. 60).

Plaintiff's Motion to Compel is **DENIED** on the grounds that the information is not essential to the cross-examination of Defendant's expert witness, and that the motion was filed significantly past the deadline for non-dispositive motions.

Plaintiff's motions to exclude the testimony of Mr. Harper and Mr. Duckworth are **DEFERRED** and will be ruled on at trial.

Finally, the Court is persuaded that, based on the written submissions thus far, Defendant International Paper Company has committed to the theory that the Base Contract between Enbridge Pipelines and International Paper Company imposed a "firm" performance obligation. Thus, evidence on this issue will not be admissible and the question will not be submitted to the jury. International Paper Company still has available to it the defense that the contract was

modified (orally or through course of dealing) as well as any other affirmative defense to enforcement of the contract that it has evidence to support.

IT IS SO ORDERED.

SIGNED this 24th day of January, 2007.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL
FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY
EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT